

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

-v-

ALBERTO WILLIAM VILAR and  
GARY ALAN TANAKA,

Defendants.

USDS SDNY  
DOCUMENT  
ELECTRONICALLY FILED  
DOC #:  
DATE FILED: 2/4/10


No. 05 Cr. 621 (RJS)  
ORDER

RICHARD J. SULLIVAN, District Judge:

The Clerk of the Court is respectfully directed to docket the attached letter.

The parties are reminded that, pursuant to the Court's individual sentencing procedures, the Government is responsible for filing all letters from victims, and the Defendants are responsible for filing all letters submitted on their own behalf.

Dated: February 4, 2010  
New York, New York

  
RICHARD J. SULLIVAN  
UNITED STATES DISTRICT JUDGE

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February 4, 2010

By email: [sullivanysdchambers@nysd.uscourts.gov](mailto:sullivanysdchambers@nysd.uscourts.gov)

The Honorable Richard J. Sullivan  
United States District Judge  
Southern District of New York  
United States Courthouse  
500 Pearl Street  
New York, NY 10007

**Re: United States v. Alberto Vilar, et al.  
1:05-cr-00621 (RJS)**

Dear Judge Sullivan:

I am writing in response to the government's letter of February 3 concerning the disposition of the Amerindo assets.

Mr. Litt asserts that, contrary to my claim, "the Government has not seized any assets in connection with this prosecution." I was imprecise, though I submit substantially correct, when I wrote to the Court that the government had "seized" Amerindo's funds. Rather, I should have said that the government had frozen the funds. Today, Mr. David Petercsak of JP Morgan Chase informed me that the funds have been frozen since 2005 at the request of the U. S. Attorney's Office or the SEC or both. The funds have been unmanaged during that time resulting in probable losses to the investors.

In addition, Mr. Litt suggests that the claims by the ATGF investors listed on page 7 of his letter "may represent only a small fraction of ATGF investors" because in July 2004, ten months before the government or the SEC caused their funds to be frozen, there were 50 additional investors not accounted for. The fact is that during the period leading up to the freezing of the funds, most of the investors left Amerindo. The government's assertion that there may be other investors whom they do not know about is completely speculative and in all likelihood wrong. We do not have access to the ATGF documents, but I believe that the government does. It is incumbent upon the government to identify any other investors. Mr. Vilar's sentence should not be enhanced on the basis of the government's guess that there might be other investors whom they do not know about.

Finally, by its own admission, the government did not notify the investors that the U. S. Attorney's Office had caused tens of millions of dollars of funds to be frozen and that those funds could be used to repay the investors, quite possibly in full. The victim impact statements

Honorable Judge Sullivan  
February 4, 2010  
Page 2

appear to be based on a mistaken belief that their money was unaccounted for. This belief resulted from the government's refusal to tell that they their funds were frozen at JP Morgan Chase. The government's excuse for not telling them is unavailing. Perhaps the real reason the government remained silent was to insure that the victim impact statement bristled with anger resulting from a false assumption that their money was missing.

Respectfully,

A handwritten signature in black ink, appearing to read 'J. Marks', written in a cursive style.

Jonathan Marks

cc: Marc Litt, Esq.  
Benjamin Naftalis, Esq.  
Glenn Colton, Esq.  
(by email)